

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF WHEATLAND AND THE COUNTY OF YUBA
REGARDING THE SHARING OF COSTS FOR THE DEVELOPMENT
OF THE YUBA-SUTTER REGIONAL HCP/NCCP**

This Memorandum of Understanding ("MOU") between the City of Wheatland ("Wheatland"), a municipal corporation and the County of Yuba ("Yuba"), a political subdivision of the State of California, is made with reference to the following facts:

- A. Yuba County and Sutter County are jointly preparing a Habitat Conservation Plan/Natural Community Conservation Plan ("HCP/NCCP") pursuant to their letters of May 2001 to the United States Fish and Wildlife Service and the California Fish and Game Department for Incidental Take Permits ("ITP"). The adoption of the HCP/NCCP and the issuance of the ITP are necessary for development to occur within the two county Project Area. Wheatland desires to participate in this effort for its incorporated area and its sphere of influence.
- B. The local entities are cooperatively working together for the development of the HCP/NCCP to protect endangered species and their habitat and to receive ITP's for projects which may occur in their jurisdictions.
- C. The process of developing the HCP/NCCP will cover multiple years and will require major funding from a variety of sources that remain uncertain from year to year.
- D. The development of the HCP/NCCP is a complex process that may involve other jurisdictions at a variety of levels such as interested parties, stakeholders, or joint permittees.
- E. Because of the complex and long-term nature of the process, the local entities have determined to proceed in phases.
- F. Since January 2003, Sutter County has acted on behalf of the local entities to maintain coordination and cooperation among various federal, state, and local agencies. Sutter County shall continue to act as the project lead.
- G. Because Wheatland and Yuba are similarly interested in the preparation of the HCP/NCCP and the issuance of the ITPs, Wheatland and Yuba desire to share the costs of development of the HCP/NCCP on a rational and equitable basis. Each party shall be responsible for its share of costs as set forth herein.

Now therefore, Wheatland and Yuba agree as follows:

1. **Recitals Incorporated**

The above recitals are incorporated by reference into this agreement.

2. **Term of the MOU**

This MOU shall be effective as of December 1, 2009 and shall remain in effect until the HCP/NCCP work is completed and all funding issues are resolved. The project will be deemed complete upon certification of the EIR/EIS and adoption of the final plan by Yuba County Board of Supervisors and once payment of any outstanding invoices has been made.

3. **Wheatland share of local entities costs**

The Wheatland share of the local entities' (Yuba County) costs is 10 percent. The process of developing the HCP/NCCP will cover multiple years and will require funding from a variety of sources such as grants, developer fees, and/or general fund. However, due to the uncertainty of the funding sources a maximum project cost and fair share limit cannot be established.

4. **Applying the Cost Sharing Ratio**

- (a) The Wheatland share of local entities' costs shall be applied to actual costs incurred. Staff time and other in-kind services may be counted towards Wheatland's share up to the maximum permitted by any grants that are obtained and the percentage of participation (Wheatland is 10% of Yuba County share of local costs)
- (b) Yuba shall provide Wheatland with a statement in April, July, October, and January of each year, showing the actual costs for the previous three months. Wheatland agrees to pay the agreed upon share of total expenses to Yuba within 30 days of receiving the statement.
- (c) Yuba shall provide Wheatland with an annual estimate of grant monies to be received and projected out of pocket costs (includes in-kind services) for the next fiscal year. The cost estimate shall be provided by March 31st of each year.

5. **Amendments**

This MOU may only be amended in writing, by mutual consent signed by both parties.

6. Notices

Any notice or other correspondence to a party shall be deemed given when received by the other party. All such notices or correspondence shall be placed in the United States mail, first class, postage prepaid, and addressed to the party at the following address:

Notices to Wheatland:

Stephen L. Wright, City Manager
111 C Street
Wheatland, CA 95692

Notices to Yuba County:

Robert Bendorf, CAO
915 8th Street
Marysville, CA 95961

7. Record Keeping.

Sutter County is the primary lead agency and shall keep and maintain accurate bookkeeping records relating to expenditures on the HCP/NCCP work and receipt of Yuba County's and Wheatland's funds for the work. Wheatland and its employees, accountants, attorneys and agents may review, inspect, copy and audit these records, including all source documents.

COUNTY OF YUBA

CITY OF WHEATLAND

By: _____
Chairman of the Board of Supervisors

By: _____
City Manager

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____
County Counsel, Yuba County

By: _____
City Attorney, Wheatland

ATTEST

By: _____
Clerk of the Yuba County
Board of Supervisors

By: _____
City Clerk, Wheatland

CITY OF WHEATLAND FUNDING AGREEMENT FOR HCP/NCCP COSTS

THIS AGREEMENT is made this _____, 2010 by and between the City of Wheatland, a general law city ("City"), and Gibson Ranch, LLC, a California limited liability company ("Developer"), who agree as follows:

1. Recitals. This Agreement is made with reference to the following background recitals:

1.1. Developer has submitted a development project application to City for the annexation and development of the Johnson Rancho property. Development of the property will be subject to compliance with the federal and state Endangered Species Acts.

1.2. The County of Yuba and County of Sutter are jointly preparing a Habitat Conservation Plan/ Natural Community Conservation Plan ("HCP/NCCP") relating to Endangered Species Act compliance in connection with development in the two counties. The HCP/NCCP will include the land in City and its outlying sphere of influence and other adjacent territory.

1.3. City supports the HCP/NCCP process and has or soon will enter into a memorandum of understanding with the County of Yuba by which the City agrees to pay 10% of the County of Yuba share of the HCP/NCCP costs.

1.4. Participation in the HCP/NCCP will benefit both City and Developer. Developer therefore agrees to assist with funding the costs to prepare the HCP/NCCP on and subject to the terms of this Agreement.

2. Funding for HCP/NCCP Costs.

2.1. Developer agrees to provide funding for City's share of the HCP/NCCP costs in accordance with the following schedule: Upon execution of this Agreement, Developer shall pay \$7,500 to City. Approximately each three months thereafter, City shall determine the sum needed for HCP/NCCP costs for the succeeding three month period and City shall prepare and submit a request for payment of that amount to Developer. Developer shall submit the payment to City within 20 days of the date of the request. The total amount of Developer funding under this Agreement shall not exceed \$60,000. City shall draw on the Developer deposits to pay or reimburse periodic requests for payment from the County of Yuba pursuant to the City-County of Yuba HCP/NCCP MOU.

2.2. If any requested payment is not timely made, City shall notify Developer and it shall have ten days to cure the default. If payment has not been made within the ten-day period, then, as its sole and exclusive remedy, City may terminate this Agreement and/or withdraw from participation in the HCP/NCCP.

2.3. City shall deposit Developer payments into a special fund for the purpose of paying and reimbursing City's share of the HCP/NCCP costs. Any Developer deposit remaining upon completion of the HCP/NCCP shall be refunded without interest to Developer.

3. Termination. This Agreement shall terminate three months after the final payment made by Developer pursuant to section 2.1, unless terminated earlier pursuant to section 2.2 or the parties agree in writing to extend the Agreement.

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4. Record Keeping. City shall keep and maintain accurate accounting and bookkeeping records relating to the City's participation in the HCP/NCCP, including all deposits into the special fund and all City costs paid or reimbursed from the fund. Developer and its employees, accountants, attorneys and agents may review, inspect, copy and audit these records, including all source documents. City shall provide to Developer a quarterly statement of the monies deposited, all City costs paid or reimbursed from the fund, and any City, County of Yuba or County of Sutter grant funds received for support of the HCP/NCCP.

5. HCP/NCCP Work. City shall coordinate with the Counties of Yuba and Sutter regarding the preparation of the HCP/NCCP in accordance with the terms of the City-County of Yuba MOU and keep Developer informed about the status of the HCP/NCCP. To the extent feasible, City shall inform Developer about HCP/NCCP-related public meetings and updates that concern City and/or the Johnson Rancho project.

6. No City or County Commitment on HCP/NCCP. Developer acknowledges that the Counties of Yuba and Sutter together with federal and state agencies are responsible for the preparation of the HCP/NCCP and the contents, scope, analysis and conclusions of the HCP/NCCP and that nothing in this Agreement enables Developer to control or direct the outcome of the HCP/NCCP. Nothing in this Agreement shall in any way commit or obligate City to approve or support any particular HCP/NCCP or to support the development of the Johnson Rancho property. Developer acknowledges that the final HCP/NCCP may not favor, support or facilitate development of the Johnson Rancho property.

7. General Provisions.

7.1. **Integration.** This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract among the parties concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, either oral or written, that may be related to the subject matter of this Agreement, except those other documents that are expressly referenced in this Agreement.

7.2. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the respective successors, assigns, heirs, devisees and personal representatives of the parties.

7.3. **Amendment.** This Agreement may be modified or amended only by a subsequent written agreement approved and executed by both parties. Amendment by City requires approval of the City Council of City and execution by the Mayor or City Manager.

7.4. **Governing Law and Venue.** Except as otherwise required by law, this Agreement shall be interpreted, governed by, and construed under the laws of the State of California. The County of Yuba shall be venue for any state court litigation, and the Eastern District of California shall be venue for any federal court litigation, concerning the enforcement or construction of this Agreement.

7.5. **No Third Party Beneficiaries.** Developer shall not be deemed to be a third party beneficiary to any consultant services contract funded in whole or in part by this Agreement.

7.6. **Notices.** Any notice, demand, invoice or other communication required or permitted to be given under this Agreement shall be in writing and either served personally or sent by prepaid, first class U.S. mail and addressed as follows:

City:

City Manager
City of Wheatland

Developer:

Managing Member
Gibson Ranch, LLC

313 Main Street
P.O. Box 395
Wheatland CA 95692.

3001 I Street, Suite 200
Sacramento, CA 95816

Any party may change its address by notifying the other party in writing of the change of address.

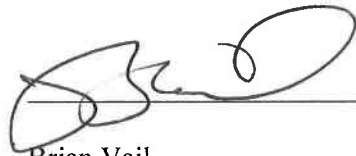
CITY OF WHEATLAND

DEVELOPER

By:

City Manager

By:

_____

Brian Vail
Managing Member
Gibson Ranch, LLC.